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In re Application of
MANIQUE RODRIGUEZ, Manuel et al.

Application No. 10/539,520

PCT No.: PCT/ES2003/000632

Int. Filing Date: 15 December 2003

Priority Date: 18 December 2002

Attorney Docket No.: ABG 3003

For: ELECTRODE-BEARING GUIDE,
COCHLEAR IMPLANT COMPRISING
SAID GUIDE AND PRODUCTION
METHOD THEREOF

DECISION

ON PETITION UNDER

37 CFR 1.181

This is a decision on applicants' "Petition to Correct Notification of Missing Requirements," filed on 13 December 2007.

BACKGROUND

On 15 December 2003, applicants filed international application no. PCT/ES2003/000632, claiming a priority date of 18 December 2002. A copy of the international application was transmitted to the Office by the International Bureau on 01 July 2004. The deadline for payment of the basic national fee in the United States was 18 June 2005.

On 17 June 2005, applicants submitted a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee.

On 29 July 2005, applicants submitted a preliminary amendment and the fee for late filing of the search fee, examination fee or oath or declaration.

On 27 November 2007, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that oath or declaration and the surcharge for late filing of the search fee, the examination fee or the oath or declaration were required.

On 13 December 2007, applicants filed this petition indicating that applicants had timely responded to the Notification of Missing Requirements via facsimile on 29 July 2005, enclosing a copy of the alleged 29 July 2005 response.

DISCUSSION

Applicants claim to have supplied a declaration of the inventors on 29 July 2005, but the declaration is not present in the file, though the remainder of the alleged transmission is. Further, the certificate of transmission under 37 CFR 1.8 is not signed in either the copy in the file or on the pages of the alleged facsimile transmission.

However, it is a moot point as acceptance of the declaration under 37 CFR 1.8(b) only provides the document with date of actual receipt. The date of actual receipt is 13 December 2007, which is also a timely response to the Notification of Missing Requirements.

The declaration has a receipt date of 13 December 2007.

However, as the Office was in receipt of the surcharge for late filing of the search fee, examination fee or oath or declaration, the Notification should not have listed it as outstanding. To the extent that the Notification of Missing Requirements (Form PCT/DO/EO/905) listed the surcharge, it is vacated.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.181 to withdraw the Notification of Missing Requirements (Form PCT/DO/EO/905) is **GRANTED in part**, as noted above, and **DISMISSED in part**.

This application is being forwarded to the National Stage Processing Branch of the Office of Patent Application Processing for further processing consistent with this decision. The application has a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 13 December 2007.

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